

PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
Business Meeting
October 16, 2006
Department of Environmental Quality
Metcalf Building Room 111, 1520 East 6th Avenue
Helena, MT

Members in attendance were Theresa Blazicevich, Frank Boucher, Greg Cross, Adele Michels, Steve Michels, Roger Noble, and Shaun Peterson. Also in attendance were Terry Wadsworth, Executive Director, and Paul Johnson, Board attorney.

Presiding Officer Cross called the meeting to order at 10:22 a.m.

Presiding Officer Cross welcomed Adele Michels of Plentywood and Steve Michels, of Raynesford, to the Board. Mr. Michels was appointed to replace Frank Schumacher as a representative of the service station dealers. His term expires June 30, 2009. Adele Michels was been asked to serve as a representative of the public. Her term also expires June 30, 2009.

Mr. Wadsworth informed the Board that an election must be held for Presiding Officer and Vice Presiding Officer to comply with ARM 17.58.303.

Mr. Peterson moved to elect Greg Cross as Presiding Officer. Mr. Noble seconded. **The motion was unanimously approved.**

Mr. Boucher moved to elect Roger Noble as Vice Presiding Officer. Mr. Peterson seconded. **The motion was unanimously approved.**

Approval of Minutes

Mr. Noble moved to accept the minutes of the August 21, 2006 Board meeting. Ms. Blazicevich seconded. Ms. Michels abstained. **The motion was approved.**

Eligibility - Former Roberts Rocky Mountain Equipment, Fac ID #47-04929, Release #4449, Butte

Mr. Wadsworth reminded the Board the laws in effect at the time a release is discovered are applied when evaluating release eligibility. He provided a summary of the staff's recommendation to determine the release ineligible. Stained soils were observed during a Phase I Environmental Assessment in February 1992. The stained soils were confirmed during a later investigation in June 1992. The release was not reported until 14 years later. While there are records of telephone conversations in 1992 between the consultant who observed the stained soils, MSE Inc., and the UST program, there is no mention of a release in those notes. DEQ does not have any record of the release prior to receiving the Phase I and Phase II reports in February 2006. If the telephone records are considered notification of the release, there is still a 24 hour notice violation, since three months elapsed between discovery of the stained soils and the telephone calls.

The applicable eligibility statute is the 1991 version of Montana Code Annotated §75-11-308(1)(b). The rules in effect included ARM 16.47.321, which required notification of a release within 24 hours of detection.

David Brandon of Brandon-Legg Development, the current owner of the property, addressed the Board. Brandon-Legg acquired the property in March 2000. He noted that Brandon-Legg is not especially concerned about the 1992 release. They have been working to clean up the old release, and can take care of it. They are more concerned with the release discovered in June 2006, when they removed a pipeline and discovered two unknown tanks. He noted that the site was formerly a Department of Transportation site. Any tanks that are leaking were probably installed by MDT. They were told by a former employee of the former station that the line they removed was a compressed air line. Brandon-Legg believes there should be two separate releases.

Mr. Boucher asked for an explanation of what was discovered that Brandon-Legg needs assistance with.

John Davis, HKM Engineering, addressed the Board. He noted that when the pipeline was removed the composite soil samples showed values slightly above RBSLs for EPH. They had received notification from DEQ that there had been a tank filled with paint-thinner like substance, so they began looking for the tanks. When they removed the tanks, which

were supposedly closed in place in 1998, they found that one contained water. The water samples came back clean, but the soil samples they took after removing the tank, piping and associated dispenser were above RBSLs for VPH. A later set of soil and groundwater samples showed contamination in both the soil and groundwater above RBSLs. There was no apparent followup after the DEQ notice that the tank had not been closed in place. The majority of the contamination was around the dispenser near the two 1,000-gallon tanks. The line that was removed was about 400 feet long and lead to the area of the 11,000 gallon AST. He believes that Brandon-Legg should be eligible, because this contamination is separate from the soil contamination discovered around the AST in 1992.

Mr. Wadsworth stated that the challenge in this matter relates to how the Department defines a release. When a release is determined to exist at a facility, the Department investigates the entire system to determine the nature and extent of contamination at the site. The Department would be the authority on whether there is a new release at the site. Had the Department been called back in 1992 when the contamination was discovered, an investigation would have been conducted to determine the full nature and extent of contamination at the facility and all contamination would have been rolled into one release and cleaned up at one time.

Mr. Davis explained the layout of the property. There was a dispenser near the building, attached to the two underground storage tanks on the eastern edge of the property. The compressed air line ran from the vicinity of the building in a westerly direction to the vicinity of the 11,000 gallon AST. There is no indication that the AST was ever connected to the two USTs in any way, and no indication of how fuel was dispensed from the AST.

Mr. Cross stated that eligibility is in question because we do not really understand whether there is more than one release, which is DEQ's area of expertise.

Mr. Davis stated that geoprobe tests came back clean, there is not a major gasoline plume underneath this property and that excavation would be proposed for future work plans. It does not appear that groundwater is seriously contaminated. There were samples above RBSLs, but later geoprobe samples came back clean. The contamination around the AST is largely surface contamination, within the first foot of soil.

Presiding Officer Cross suggested the matter be tabled until Brandon-Legg and the Department can determine whether there should be more than one release number.

Aaron Anderson addressed the Board and indicated that Brandon-Legg has been cooperating fully with the Department. One of the questions is whether the fuel lines were used after 1992 or closed before 1992. If they were closed before 1992, all the contamination is considered one release.

Mr. Peterson noted that the Department did not determine that there was more contamination at the site when the contamination was discovered around the AST in 1992. He asked: If the Board were to grant eligibility to this release, would it include the 1992 contamination that was in violation of the 24 hour rule?

Mr. Wadsworth stated that would depend on whether the department determined there was one release or more than one.

Ms. Olsen stated that the Department will work with Brandon-Legg to figure out if there is credible evidence guiding the Department one way or the other. They will report back at the next meeting.

Mr. Noble moved to delay a decision on the eligibility pending further investigation by the Department to determine if there is a difference between the two areas of contamination. Mr. Michels seconded. **The motion was unanimously approved.**

Claim Adjustment Dispute – 20060420F – I-90 Exxon, Fac ID #16-08191, Bozeman

Mr. Wadsworth recommended that the Board table this matter. He has received correspondence from Mr. Alexander, the owner of the property, addressing this claim and another claim for this site with a similar adjustment. Mr. Wadsworth would like the opportunity for the Board staff to meet with Mr. Alexander to discuss the matters addressed in Mr. Alexander's letter.

Mr. Boucher moved to table the matter based on the letter Mr. Wadsworth received. Ms. Blazicevich seconded. **The motion was unanimously approved**

Eligibility Ratification

Mr. Wadsworth informed the Board of the eligibility applications before the Board. Six facilities are recommended eligible. One is recommended ineligible.

Ms. Blazicevich moved to ratify the eligibility determinations contained in the eligibility table. Mr. Boucher seconded. **The motion was unanimously approved.**

Board Staff Recommendations Pertaining to Eligibility From August 10, 2006 thru October 4, 2006				
Location	Site Name	Facility ID #	DEQ Release # Release Year	Eligibility Determination – Staff Recommendation Date
Condon	CHS Cardtrol and Bulk Site	99-95029	4485 Apr 2006	Eligible – 9/13/06
Cameron	Cameron Store & Cabins	28-06264	3763 Jul 1999	Eligible – 9/11/06
Chinook	Scotts Auto Body	99-95030	4486 March 2005	Eligible – 9/20/06
Malta	Ezzie's Wholesale Inc	36-06671	4468 Feb 2006	Eligible – Insurance – 9/25/06
Columbia Falls	F H Stoltze Land & Lumber Co	99-95031	4477 Mar 2006	Eligible – 9/28/06
Missoula	Sammons Trucking	32-01624	4473 7/22/1993	Ineligible – Release not from PST 10/4/06

Claims over \$25,000

Mr. Wadsworth presented the Board with the claims for an amount greater than \$25,000 reviewed since the last Board meeting. (See table below). There are two claims totaling \$166,950.77. The Westgate Exxon claim is for excavation of soils. The Bruce's Quick Lube claim is for installation of various wells.

Presiding Officer Cross asked if the Westgate claim was the total expenditure on the site and whether the site has now been cleaned up. Mr. Wadsworth indicated that there are other claims on the site. It is not clear whether all the contamination was removed, because there is a structure on the site and it was not removed.

Mr. Boucher moved to accept the claims over \$25,000. Mr. Peterson seconded. **The motion was unanimously approved.**

Location	Facility Name	Facility ID#	Claim #	Claimed Amount	Reimbursed
Great Falls	Westgate Exxon	07-04004	20060811D	\$155,043.94	\$140,783.02 Co-payment met with this claim
Butte	Bruce's Quick Lube Inc.	47-06099	20060814A	\$26,167.75	\$26,167.75
Total					\$166,950.77

Weekly Reimbursements

Mr. Wadsworth presented to the Board for ratification the summary of weekly claim reimbursements for the weeks of August 16, 2006 through October 4, 2006. (See table below). There were 267 claims, totaling \$817,794.36.

Ms. Michels asked if any of the releases approaching the \$300,000 cumulative expenditure total are near closure.

Presiding Officer Cross noted that many of the sites have been in various monitoring phases for many years and will continue to be monitored for some time. It is not clear whether any of these releases are near closure.

Mr. Wadsworth brought to the Board's attention that there were three claims for Westgate Exxon during the week of August 30. Not much work was done before the excavation of the soils.

Presiding Officer Cross noted that excavating contaminated soil before spending money on extensive monitoring is likely a more efficient use of available funds than conducting extensive monitoring and then removing the contamination.

Mr. Noble moved to approve the weekly claim reimbursements. Mr. Michels seconded. **The motion was unanimously approved.**

<u>WEEKLY CLAIM REIMBURSEMENTS</u> October 16, 2006 BOARD MEETING		
<u>Week of</u>	<u>Number of Claims</u>	<u>Funds Reimbursed</u>
August 16, 2006	53	\$143,684.92
August 23, 2006	43	\$126,869.76
August 30, 2006	30	\$120,930.06
September 6, 2006	29	\$98,229.58
September 13, 2006	24	\$88,761.85
September 20, 2006	27	\$76,560.52
September 27, 2006	33	\$80,224.01
October 4, 2006	28	\$82,533.66
Total	267	\$817,794.36

Proposed Legislation

Mr. Wadsworth noted that in previous meetings the Board has discussed several topics that may require legislative action. These include: the need to address the word "immediate" in the law, a possible fee increase, the role of insurance in the fund, and limiting the time for eligibility application.

Ms. Alexander took the list of possible legislative proposals to the Petroleum Marketers Association board. The Petroleum Marketers board is not interested in taking the lead on any of the possible legislation. In addition, the Department is also not interested in supporting a fee increase bill. The Legislative Audit Division is not interested in taking the lead, because legislation is not a result of an audit. The Legislative Audit Division would support a fee increase as long as there is some compromise between raising the fee and increasing the contribution on the part of the owners and operators. Such a compromise could include an increase in the co-pay or an insurance component.

Mr. Wadsworth provided a summary of the basis for the proposal to increase the fee to one cent per gallon and to provide an incentive for the owners and operators to carry insurance to cover all or a portion of cleanup costs for releases. As a result of inflation, the buying power of the fund has decreased significantly. A fee increase would bring the fund back to the 1995 level. One of the incentives to encourage owners and operators to carry insurance could be to decrease the owners/operators co-pay if they carry insurance.

Mr. Wadsworth also indicated that the Board may wish to develop legislation to ensure that the statute of limitations on breach of contract for subrogation of claims begins at the time the claims are denied.

Paul Johnson, Board attorney, stated that the general agreement of the Board was for a motion to direct the staff to develop legislation and find a sponsor if possible for the 2007 Legislation session to amend the eight year statute of limitations to provide that the statute begins to run when the insured owner or operators claims to the insurer is first denied or otherwise first breaches the contract.

Mr. Boucher moved to direct the staff to develop legislation and find a sponsor if possible for the 2007 Legislation session to amend the eight year statute of limitations to provide that the statute begins to run when the insured owner or operators claims to the insurer is first denied or otherwise first breaches the contract.. Ms. Blazicevich seconded. **The motion was unanimously approved.**

Sandi Olsen noted that, even though the deadlines for taking proposed legislation before the Environmental Quality Council for the Governor's approval, the Board can still move forward with legislation for a fee increase if they can find a sponsor.

There was a discussion of the various matters to be included in a motion. Mr. Peterson moved to craft the language associated with the proposed legislation information the Board has discussed, to have it prepared for the 2007 legislative cycle and to obtain a sponsor to bring it before the Legislature. Ms. Blazicevich seconded. **The motion was unanimously approved.**

Mr. Wadsworth recommended that if language is crafted before the next Board meeting, a telephone conference be held to discuss the language in the proposed legislation before December 11.

Doney contract modification

Mr. Wadsworth noted the need to modify the current contract with the Doney law firm for the Board's subrogation activity. He explained that the modification would be to extend the number of hours allowed under the contract by an agreed upon number of hours, to be approved by the Presiding Officer. The modification would then be presented to the DEQ legal review committee for approval.

Mr. Boucher moved that there be a modification to the existing contract for an additional number of hours, not to exceed 600 hours, which may be approved by the Presiding Officer. Mr. Noble seconded. **The motion was unanimously approved.**

There was a ten minute break

Fiscal 2008-2009 Proposed Biennial Budget

Mr. Wadsworth presented the proposed budget and noted that this budget will become part of House Bill 2 at the beginning of the upcoming legislative session.

Mr. Boucher noted that the projected revenue in 2008 and 2009 are less than in 2006. Mr. Wadsworth noted that the number inserted in the budget is the estimated revenue proposed by the Montana Department of Transportation. Sometimes the actual dollars received are more than predicted by MDT.

Ms. Olsen noted that new projections are available from the Legislative Finance Committee that projects an increase in revenue in 2007, 2008 and 2009 above the 2006 level. Among other factors, the expected decline in fuel use did not occur. As well, diesel fuel use increased more than was expected and more than the drop in gasoline use, resulting in more projected revenue. New budget projections should be available by the December Board meeting.

Mr. Wadsworth noted that the Biennial Report discusses the increase in diesel use. Some of the increase is due to the fact that railroads are at capacity due to hauling coal, requiring freight to be hauled by truck.

Mr. Peterson noted that the DEQ budget has increased for the next biennium. He recalled that the Board, under the previous Chairman, asked that DEQ and the Board staff decrease their budgets by 10%

Ms. Olsen recalled a decrease of 5%. Several years ago DEQ did take a 10% reduction in one year, and acknowledged that the 2008-2009 budget does not reflect the decrease, primarily because salaries have increased significantly. The last legislature increased salaries 7%. In addition, DEQ did a one time increase in salaries to address employee retention difficulties. The 2008-2009 budget does not propose any increases for any new activity, so the only additional increases beyond salaries are those directed by the Governor's budget office are for fixed costs, such as rent.

Mr. Peterson noted that the projected claim payments are also down, and asked for an explanation of the decrease.

Mr. Wadsworth stated that the proposed claim payments shown in the budget are usually set at a value that will balance the budget. In an effort to provide additional information to Mr. Peterson's earlier comment, Mr. Wadsworth stated that during the last biennial budget cycle the Board was displeased with not being given sufficient opportunity to evaluate and comment on the proposed budget. As a result, the Board wanted to ensure that there were some objectives met. They asked that the Board and Department reduce administrative costs 5% per year or 10% per biennium until such time as administrative costs are less than 15% of the overall budget.

Ms. Olsen stated that the Department currently has three vacancies and average two vacancies at any one time. Those vacancies result in the 10% cuts that are being asked, but the Department does not budget for that level.

Mr. Peterson noted that the budget process is moving forward quickly, and the Board seems to be in the same position again of not having much input into the process. The Board exists to pay claims and is not interested in borrowing money. The Board would like to hear from the Department at the next meeting what can be done to prioritize claims and keep the Board out of trouble financially. He noted that the Board will be in trouble because the Board is under-budgeted for claims.

Ms. Olsen noted that she will explain prioritization in the PRS Report. She also explained that MDT has concluded that their original projections were overly conservative and that new projections will be available soon. An updated budget will be available for the December Board meeting.

Mr. Peterson stressed that the Board had asked for a 5% cut per year, and that has not happened.

Ms. Olsen admitted that he is correct. The Department is trying to balance its workload and may come in under budget, but is not willing to commit to reducing workload.

Fiscal Report

Mr. Wadsworth presented the Board with the current Fiscal Report. Fiscal Year 2007 began July 1, 2006. One quarter is complete. 22% of projected revenues have been received. This discrepancy is a result of the fact that no revenues are received in July, while two months worth are received in June, at the end of the fiscal year. Expenditures are in the range of 15% of projected to 24% of projected throughout the various categories. There is one release in Cascade County that is projected to cost approximately \$800,000. Those costs may not be included in the projection.

Mike Trombetta, Hazardous Waste Bureau, informed the Board that the first phase of cleanup at the Cascade County site will not be as expensive as projected, and some of the costs will not be incurred until next fiscal year.

Mr. Peterson noted that the current year budget is projecting a \$1.9 Million deficit.

Board Attorney Report

Paul Johnson, Board attorney, stated that the court has ordered a briefing schedule in the Town Pump Dillon case. All briefs are scheduled to be completed before the December Board meeting. If no oral argument is ordered, all submissions will be complete by the next meeting.

Mr. Johnson stated that Stacey Oil has requested a MAPA proceeding to review the 10% penalty imposed by the Board at the August meeting. Mr. Wadsworth said he has asked the owner for the name of his counsel and is awaiting a response. By law an owner must be represented by counsel at a MAPA proceeding. A hearing examiner has been notified that a hearing is being considered.

Presiding Officer Cross noted that Allen Oil is now officially out of business and asked what effect that will have on the Allen Oil case. Mr. Johnson said he would take a look at that matter.

Board Staff Report

Mr. Wadsworth presented the Board staff report. He explained that the eligibility chart has been expanded to show the previous year and the current year. The claims chart has also been expanded to show two years. The expanded charts make it easier to track this year's month-by-month activity against last year's activity. It appears there may be approximately 100 more claims this year, if the current claim trend holds.

A comparison of corrective action work plans received and value of those plans between the years 2004, 2005 and 2006 shows that there have been a larger number of plans reviewed and the total value of those plans is significantly higher than in past years.

Mr. Wadsworth pointed out Bob's Valley Service on the Enforcement Order table. The attorney for the company has been in contact with him, and is concerned that the enforcement order cannot be satisfied in the time allowed for continued reimbursement under the Board's rule. Mr. Wadsworth assured him that the Board takes into account all facts in the matter and has the discretion to adjust the penalty.

Petroleum Release Section Report

Mr. Trombetta told the Board that there have been 36 releases discovered in calendar year 2006. Two thirds of those releases are either found tanks (19) or above-ground storage tanks (4). Of the remaining one third of the releases, about half are spills and overfills (6). The remaining releases are leaking equipment (4).

Ms. Olsen rose to provide report about the Department's tank regulation and cleanup programs, noting that background, program history, characteristics in order to make better informed decisions. As the board determines how to move forward financially, there are a number of trade-offs that must be considered.

The tank program is largely a delegated program under federal law, composed of the permitting program, the cleanup program and the financial assurance program. The permitting program regulates tanks that meet the definition of federal underground storage tanks. When the Montana law was passed in order to get a delegated federal program, the Legislature added UST piping as an additional component to the permitting regulations. They also chose not to regulate aboveground storage tanks.

The cleanup program, under the two tank statutes in Montana, is responsible for cleanup of releases federally defined underground storage tanks, the aboveground storage tanks and the piping on underground storage tanks that the federal government does not cover.

The financial assurance program consists of the claims reimbursement process that the Board manages for releases from petroleum storage tanks.

Since program inception there have been 4313 releases, 1656 of which are still active. 882 of the currently active releases have been determined eligible, 570 have not applied for eligibility, 147 were declared ineligible and 57 have applications pending determination. Of the 2657 releases that have closed, 723 were eligible and 1934 were ineligible or did not apply for eligibility. 96% of the more than 2600 releases that have closed were closed within seven years of identification

In 1992-1993 and 1998-1999 there were changes in the laws that drove work at the facilities, which resulted in an increase in the number releases discovered in those years. The Department is expecting another such peak in 2007 as a result of the federal deadline on the development of Spill Prevention Control and Countermeasures (SPCC) programs for aboveground storage. Those plans must be prepared by October 2007. As a result, many AST sites will be installing liners under their tanks, requiring excavation of the area around the tanks.. The excavations are likely to result in discovery and reporting of currently unidentified releases.

An evaluation of the data shows that 62% of all releases that are seven years old or younger have been closed. They also projected that some releases will take as long as thirty years to close. The easiest releases to close are the ones that are being closed. Those that remain are the more difficult, time-consuming ones. The Remediation Division and the Department are working to determine how to address the problems of prioritizing releases for closure. She presented the current Department guidelines that are taken into account to prioritize a release. Releases that meet the following criteria must be addressed and worked on:

1. Significant impact to human health or the environment – If the contamination in drinking water is above DEQ-7 levels, it must be worked on. DEQ-7 levels are derived from the federal Water Quality Act.
2. If surface water is impacted above DEQ-7 levels.
3. If the release creates subsurface vapors that creep into structures above acceptable levels.
4. Soils impacted that have a connection to drinking water or public water supply lines.
5. Contamination that impacts a sensitive environment or an endangered species.

Other factors considered are whether there are adjacent releases (commingling and/or migrating plumes); if an owner or operator is trying to sell the property or is otherwise changing the status of the property; if there are cleanup opportunities, such as the demolition of a building over contaminated soils; if site conditions are changing, such as migration of a river channel that intersects a release. There are also low and medium priority sites.

The Department has looked at several ideas to help control costs. Remediation's goals include aggressively taking sites to closure while streamlining the cleanup process. DEQ has done a significant amount of work with Board staff to streamline the process and get more sites processed. If costs are going to be controlled there are potentially several ways the department can assist with that. Each has drawbacks that don't necessary further the goal of streamlining the process and aggressively taking sites to closure. Can work plan reviews be delayed to slow the rate of spending? No. The statute sets out time frames for the Remediation Division to be reviewing work plans and moving towards cleanup. Cleanup is required by law regardless of the funding source. In the case of significant releases, delay could allow spread of the

contamination, increasing risk and possibly increasing the cost of cleanup. Delayed cleanup means more monitoring. Can the Division do less aggressive cleanup? No, not if it will lead to spread of contamination. Less aggressive cleanup is possible if the contamination is stable. If certain work is delayed short term costs may be decreased, but this will likely increase the time to closure, and therefore long term costs. Can regulatory costs be reduced? The Department and the Remediation Division have already worked to streamline the process and aggressively take sites to closure and get them out of the process. If anything further is done, then the time to closure will increase and increase monitoring costs. Can the Remediation Division limit work on low priority sites? This is already being done. 265 of the lowest priority sites are not being worked on at the moment. The Division is evaluating other medium and low priority sites to see if it is appropriate to drop any more off the working list.

EPA has provided some more money for 2007 and 2008 and will be putting that towards focusing two of the existing FTEs on closures. The goal is to get more sites to closure and reduce costs because they are closed. Project officers will not be working on other higher priority sites as a result.

Monitoring is done with several purposes in mind. The first is to investigate the magnitude, nature and extent of contamination. Defining what has to be cleaned up is part of developing a cost effective cleanup plan. 50% of the work plans processed are specifically for investigative monitoring. This is when the numbers of wells and the numbers of constituents evaluated peak. Monitoring is also conducted during active cleanup to see if the cleanup is being effective. If not, a new strategy must be developed. 22% of the work plans processed are for cleanup monitoring. This is also three quarters of the monitoring that is conducted. The final purpose is residual long-term monitoring and monitored natural attenuation, which is a cleanup method. During those phases a minimum number of wells are sampled for a minimum number of constituents on minimum frequency. Monitoring natural attention sampling is conducted every three years. If a well is not used at least once in three years it must be closed. Monitoring must be conducted until it can be demonstrated that DEQ-7 levels have been met, the water is safe to drink and there will be no environmental impacts.

In order to accelerate closures they have worked to develop closure policy and procedures, which are helping get more sites to closure. There is a closure lead staff that works to ensure releases are not lost in the cracks. In the past it has occurred that, as a site becomes less contaminated through cleanup it becomes less of a threat to health and the environment and drops in priority. If a new release occurs that is higher priority, the new release will draw attention and resources away from the first release, which then sits unattended. The closure lead staff is charged with ensuring those sites do not remain unattended.

Historically, of all the revenues received, the legislature has spent 10% on administration of the fund, 70% on claims themselves and 20% on regulation of cleanup activity.

She notes that the accruals have been declining over the past few years, which may be a result of higher claims payment due to streamlining of the claims process.

She encourages the Board to continue to monitor cash closely. One requirement of most federal delegated programs is to have a cash reserve of \$1 Million. Montana secured a waiver of that requirement when it provided the Board with loan authority. She indicated that EPA can revoke the delegated authority for the program at any time if it feels the program is not meeting its intended purpose.

She presented several options for managing the Fund, including paying claims on a first-come-first-served basis, transitioning to private insurance, reverting the program to the federal government, paying claims as they come in until there is no money left, then waiting for the next month's revenue to come in to begin paying claims again, or taking out a loan.

Mr. Peterson indicated that taking out a loan, which needs to be repaid, is only putting off the problem and not an option unless we see some efforts to control the costs. The Board's role to provide financial assurance is necessary. He is interesting in making the program work and that's why the Board asked for the Department's input on how to make it work.

Ms. Olsen summarized by saying that both the Department and the Board have been working to streamline their processes, and to get more work done and releases closed. However, there is still more work to be done than there is money available. In addition, with inflation the buying power of the Fund has been eroded and costs continue to rise. At this point either cleanup or claims reimbursement must be limited. The Department is very interested in working with the Board to figure out how to manage the available money, but the Department cannot abrogate its responsibility to take sites to cleanup.

A 5% cut in the Department's portion of the budget would be approximately one FTE. If an FTE is lost there are trade-offs, but the Department can look at that option. In the past the Department has had at least one FTE vacant anyway.

Mr. Peterson asked where the budget stands and how changes can be made before the Legislature comes into session.

Ms. Olsen stated that the budget has already been electronically submitted. To change the budget at this point the Board, the Department or the Petroleum Marketers will need to make suggestions at the committee hearings on the budget when the Legislature is in session, probably the first week of January.

Mr. Peterson expressed frustration that this is the same position the Board was in during the last budget cycle. Things got pushed down to the wire and then it was too late for the Board to have any real input into the budget.

Ms. Michels moved to correlate the Board's 2008 meeting schedule more closely with the budget process. Mr. Boucher seconded. **The motion was unanimously approved.**

Ms. Olsen pointed out that the Board does not need legislative approval to spend less money, only to spend more. Claims payments are a statutory line item, meaning that legislative approval is not necessary to spend money on claims, only cash in the bank. As long as there is cash in the bank there is authority to spend that money on claims.

Mr. Peterson reiterated that the Board is not interested in borrowing money. Therefore the Department has to work with the Board to keep the fund expenditures in budget.

Ms. Olsen stated that the Department is keeping costs flat where it can, is not seeking any new programs, and is seeking additional federal money offsets. The only other option available is for the Department to not fill vacant positions as they become vacant.

Ms. Blazicevich suggested to that the Department work hard to decrease the amount of turnover and hire experienced people. Experienced personnel can get work done much more efficiently.

Public Forum

Mr. Wadsworth notified the Board that the mayor of Townsend and a Broadwater County Commissioner have contacted the Board staff concerning the Conoco Pop Inn located in Townsend, which has an administrative order against it. They would like to let the Board know they are actively trying to protect human health and the environment and get the administrative order closed, but they do not own the property and their ability to act is limited. They anticipate that the property will be seized due to back taxes at some point. They would like to retain some reimbursement, if possible. They are asking if there is anything the Board desires to have done at the site. Mr. Wadsworth instructed them to work with the Department to minimize environmental impact and migration of the plume, and to keep the Board informed of their actions. To date they have been able to empty the tanks, but if they acquire the property, they would like to remove the tanks and demolish the building, allowing for excavation of the contamination.

Mr. Trombetta noted that there are three releases at the site. Two of those releases were granted eligibility by the Board. An application has not been received on the third release.

The next scheduled Board meeting is December 11, 2006, in Room 111 of the Metcalf Building, 1520 East 6th Avenue, Helena, MT.

Meeting adjourned at 1:32 p.m.

Greg Cross - Presiding Officer